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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN H. WOOD, Plaintiff - Appellant, v. DOLLAR RENT-A-CAR SYSTEMS INC, an Oklahoma corporation, e/s/a DTG Operations, Inc., Defendant - Appellee.	No. 03-56290 D.C. No. CV-02-03951-RGK MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Argued and Submitted March 11, 2005
Pasadena, California

Before: HALL, WARDLAW, and PAEZ, Circuit Judges.

John H. Wood ("Wood") appeals the district court's grant of summary judgment in favor of his former employer, Dollar Rent-A-Car Systems, Inc. ("Dollar"), in his action alleging (1) age discrimination in violation of California's

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Fair Employment and Housing Act ("FEHA"), (2) retaliation in violation of FEHA, (3) interference with his rights under the Family and Medical Leave Act ("FMLA") and the California Family Rights Act ("CFRA"), (4) breach of an implied-in-fact employment contract, (5) wrongful termination in violation of public policy, and (6) violation of the California Unfair Practices Act ("CUPA"). We have jurisdiction pursuant to 28 U.S.C. § 1291. Reviewing the grant of summary judgment *de novo*, *see Vasquez v. County of Los Angeles*, 349 F.3d 634, 639 (9th Cir. 2003), we affirm the district court's ruling on Wood's claim that Dollar breached an implied-in-fact employment agreement, and we reverse the district court's rulings on all of Wood's remaining claims.[1]

I.

The district court did not err in granting summary judgment in favor of Dollar on Wood's breach of implied-in-fact contract claim because Wood signed an express agreement acknowledging that he was an at-will employee. Although a contractual understanding between the parties may overcome the statutory presumption of at-will employment, *see Guz v. Bechtel Nat'l, Inc.*, 8 P.3d 1089, 1101 (Cal. 2000), courts will not infer an employment contract that varies the

[1]Because the parties are familiar with the facts, we do not recite them here except as necessary to explain our disposition.

terms of an express agreement signed by an employee. *See id.* at 1103 n.10 (noting that "most cases . . . have held that an at-will provision in an *express written agreement*, signed by the employee, cannot be overcome by proof of an implied contrary understanding"); *Tomlinson v. Qualcomm, Inc.*, 118 Cal. Rptr. 2d 822, 829 (Cal. Ct. App. 2002). Because Wood signed an agreement acknowledging that his employment was at will, the district court correctly declined to recognize the existence of a contrary implied contract.

II.

The district court erred in granting summary judgment in favor of Dollar on Wood's age discrimination claim. Dollar's document setting forth its lay-off procedures made no mention of lay-offs of full-time employees. Further, John Frankenberger, the Dollar manager who selected LAX employees for lay-offs, testified that he did not include Wood on his initial lay-off list because Wood did not fit the criteria, "the two biggest" of which were people with the least seniority and part-time individuals. Moreover, Frankenberger added Wood, the sole manager laid off from LAX, to the lay-off list only after Mike Souza instructed him to do so. This evidence, along with the evidence from Wood's prima facie case, creates a triable issue of fact as to whether Dollar's asserted reason for terminating Wood was a pretext for age discrimination. *See Reeves v. Sanderson*

Plumbing Prods., 530 U.S. 133, 148 (2000) (holding that a plaintiff's prima facie case, combined with evidence that defendant's proffered reason is unworthy of belief, may permit a fact finder to conclude that the employer unlawfully discriminated); *Porter v. Cal. Dep't of Corrections*, 383 F.3d 1018, 1031 (9th Cir. 2004) (holding that deviations from protocols and irregularities in procedures support an inference of pretext sufficient to overcome summary judgment). In concluding otherwise, the district court improperly weighed the evidence and resolved disputes over material facts in Dollar's favor. *See T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987) (holding that on summary judgment "the judge does not weigh conflicting evidence with respect to a disputed material fact" and instead "must view the evidence in the light most favorable to the nonmoving party").

At the summary judgment stage, a plaintiff's burden is not high. *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 889 (9th Cir. 1994). He need only show that "a rational trier of fact could, on all the evidence, find that the employer's action was taken for impermissibly discriminatory reasons." *Id.* Wood has met this burden. We therefore reverse and remand Wood's age discrimination claim for a trial on the merits.

III.

The district court also erred in granting summary judgment in favor of Dollar on Wood's retaliation claim. Wood demonstrated a causal link between his testimony in his former supervisors' lawsuits against Dollar and Dollar's adverse employment actions against Wood by pointing to the temporal proximity between Wood's protected activity and Dollar's adverse employment actions, including removing Wood's computer and office furniture, ordering Wood out of his cubicle, and ultimately terminating Wood. *See Yartzoff v. Thomas*, 809 F.2d 1371, 1376 (9th Cir. 1987); *see also Coszalter v. City of Salem*, 320 F.3d 968, 977 (9th Cir. 2003). Wood also pointed to Dollar managers' knowledge of Wood's testimony, *see Thomas v. City of Beaverton*, 379 F.3d 802, 812 n.4 (9th Cir. 2004), and "circumstantial evidence of a pattern of antagonism following [Wood's] protected conduct." *Porter*, 383 F.3d at 1030 (internal quotation marks omitted). Not only has Wood established a prima facie case of retaliation, but as noted, he also has raised a genuine factual dispute as to whether Dollar's proffered reason for terminating him was pretextual. Thus, we reverse and remand this claim for a trial as well.

IV.

The district court erroneously applied the *McDonnell Douglas* burden shifting scheme to Wood's FMLA/CFRA claims, requiring Wood to show that

Dollar's reason for terminating him was pretextual. *See Bachelder v. Am. West Airlines, Inc.*, 259 F.3d 1112, 1125 (9th Cir. 2001) (holding that the *McDonnell Douglas* framework is inapplicable to FMLA interference claims and that the pivotal question is whether the plaintiff has established that he is entitled to the benefit he claims). Although an employer's obligations under FMLA and CFRA cease where an employee is terminated pursuant to a valid lay-off, *see* 29 C.F.R. § 825.312(d); Cal. Code Reg. § 7297.2(c)(1)(A), an employee's FMLA/CFRA claims may remain viable where he alleges that his termination was unlawful. *See Liu v. Amway Corp.*, 347 F.3d 1125, 1136 n.11 (9th Cir. 2003) ("Termination within the context of a reduction in force does not insulate the defendant from liability for violating FMLA. Where a plaintiff alleges that she was terminated for unlawful reasons, courts will not accept a reduction in force as the conclusory explanation for the employee's termination."). Here, Wood's claim that Dollar interfered with his FMLA/CFRA rights is tied to his age discrimination and retaliation claims. Because Wood has raised a genuine factual dispute as to the validity of his termination under FEHA, we reverse and remand for a determination of whether Dollar violated FMLA and CFRA by denying him leave.

V.

Because Wood's wrongful termination in violation of public policy and CUPA claims depend on his age discrimination and retaliation claims, we reverse the district court's grant of summary judgment as to these claims as well. For the same reasons, we reverse the district court's dismissal of Wood's claim for punitive damages and remand for further proceedings to determine whether such damages are warranted.

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For the foregoing reasons, the judgment of the district court is **AFFIRMED IN PART**, **REVERSED IN PART**, and **REMANDED**.

Appellant shall recover his costs on appeal.